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Item
A COPY OF THE ACTS

OF THE

CORPORATION OF NASHVILLE

AND

LEGISLATURE OF TENNESSEE,

AUTHORIZING THE SUBSCRIPTION

OF

\$500,000 OF STOCK

IN THE

NASHVILLE AND CHATTANOOGA

RAIL ROAD COMPANY,

WITH THE

OPINION OF THE SUPREME COURT OF TENNESSEE,

CONFIRMING SAID SUBSCRIPTION.

NASHVILLE:

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1849.

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THE NASHVILLE AND CHATTANOOGA RAIL ROAD.

Upon the proposition being made for the City of Nashville to take \$500,000 worth of stock in the Nashville and Chattanooga Rail Road Company, the subject was presented to the attention of the citizens by an order of the Board of Mayor and Aldermen to have the proposal tested by a vote for, and against the measure. Notice having been given to that effect, the said vote was taken on the 3d day of July, 1847, the result of which showed that the citizens were in favor of taking stock, by a majority of some three to one. The vote was given, however, upon condition—that the calls to be made on said stock, might be paid in the bonds of the city, not having longer time to run than thirty years.

The following proceedings had by the Legislature and the Board of Mayor and Aldermen, will more fully set forth the nature of these transactions.

AN ACT

To authorize the subscription on behalf of the Town of Nashville, of twenty thousand shares of Stock, in the Nashville and Chattanooga Rail Road Company.

SECTION 1. *Be it enacted by the Mayor and Aldermen of the Town of Nashville, That the Mayor of the Town of Nashville, be, and he is hereby authorized and empowered for and on behalf of the Corporation of said Town, and in their name, to subscribe for twenty thousand shares of the capital stock of the Nashville and Chattanooga Rail Road Company, subject to the conditions hereinafter prescribed.*

SEC. 2. *Be it further enacted, That the sum of ten thousand*

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dollars be, and the same is hereby appropriated out of any monies in the Treasury not otherwise appropriated, to pay the sum of fifty cents on each share of stock thus subscribed, which sum is to be paid at the date of the subscription.

SEC. 3. *Be it further enacted*, That the subscription shall be made subject to the following restrictions and conditions:

1st. That if the Legislature of Tennessee, at its next session, shall on a *bona fide* application by the Board of Mayor and Aldermen of Nashville, fail or refuse to amend their charter, so as to permit them to issue bonds or scrip, or borrow money on the faith of the Corporation, to meet the calls or instalments to become due on their subscriptions, then it shall be optionary with the Board of Mayor and Aldermen of Nashville to continue their subscription for the whole, or any number of shares of stock thus taken, or withdraw their subscription entirely, receiving in payment their ten thousand dollars, or so much thereof as may not be consumed in the necessary expenses accruing during the continuance of their subscription.

2nd. The Rail Road Company shall be bound to receive and accept the bonds or scrip of the Corporation, at its par value, in payment of the calls on this subscription.

3rd. The construction of the road shall not be commenced until forty thousand shares of the stock, in addition to that taken by this Corporation, shall also be subscribed.

SEC. 4. *Be it further enacted*, That it shall be the duty of the Mayor of this Board, on making the subscription aforesaid, to file with the Board of Commissioners of the Rail Road Company, a copy of this act, and that he receive from said Board a written acceptance of this subscription under its terms, which he shall file in the archives of the Corporation.

JOHN A. GOODLETT, *Mayor.*

Wm. GARRETT, *Recorder.*

[Passed 9th July, 1847.]

CORPORATION OF NASHVILLE.

I certify the foregoing a true copy of a law passed by the Board of Mayor and Aldermen of the Corporation of Nashville, on the 9th day of July, 1847.

WM. GARRETT,
Recorder for said Corporation.

AN ACT

To authorize the towns of Nashville, Murfreesborough, Shelbyville, and Winchester, to raise money on loan, or to issue their bonds, to pay the calls on stock subscribed, or to be subscribed, in the Nashville and Chattanooga Rail Road.

WHEREAS, The town of Nashville, by its board of Mayor and Aldermen, has authorized the Mayor of said town to subscribe for twenty thousand shares of the capital stock of the Nashville and Chattanooga Rail Road, which subscription has not however, yet, in fact been made; and, *whereas*, it is necessary that further power should be extended to the corporate authorities of said town, to enable them to pay the calls upon said stock. Therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the town of Nashville be, and it is hereby authorized, through its Mayor and Aldermen, and by the subscription of its Mayor, on the books of the Nashville and Chattanooga Rail Road Company, to subscribe for twenty thousand shares of the capital stock of said company.

SEC. 2. *Be it enacted*, That the Mayor and Aldermen of the town of Nashville, be, and they are hereby authorized to raise money on loan, by pledging the faith of the Corporation, by pledging a portion of its taxes by mortgage or otherwise, as to them may seem best, to an amount not exceeding what may be demanded for the calls upon the stock aforesaid; and said loan may be created for such length of time, and payable in such manner as to the said Mayor and Aldermen may be deemed best.

SEC. 3. *Be it enacted*, That the said Mayor and Aldermen, be, and they are hereby authorized, if to them it shall seem best, instead of making a loan as aforesaid, for the whole amount of said calls, or any part thereof, to issue the bonds of said Corporation, under its corporate seal, to be signed by its Mayor, and countersigned by its Recorder, for the whole or any part of said calls, which may be made from time to time by said Rail Road Company on said stock.

SEC. 4. *Be it enacted*, That the bonds so to be issued, shall be in sums not less than five hundred dollars each, that they shall not bear a greater rate of interest than six per centum,

per annum, and shall not be payable at a greater distance of time from their respective dates than thirty years.

SEC. 5. *Be it enacted*, That a like privilege of subscription, and a like power to issue bonds, and to raise money on loan, be extended to the following incorporated towns, to wit: Murfreesborough, Shelbyville, and Winchester; *Provided*, That the Mayor and Aldermen of the town of Murfreesborough, Shelbyville and Winchester may issue bonds for their stock, or in negotiating loans under this act, of a denomination as low as one hundred dollars.

F. BUCHANAN,

Speaker of the House of Representatives.

J. M. ANDERSON,

Speaker of the Senate.

Passed, December 9, 1847.

AN ACT

To authorize the subscription on behalf of the Town of Nashville, of twenty thousand shares of Stock in the Nashville and Chattanooga Rail Road Company.

WHEREAS, By an act of "The Mayor and Aldermen of the Town of Nashville, passed on the 9th day of July, 1847, it was enacted that the Mayor of the Town of Nashville be authorized for, and on behalf of said Corporation, to subscribe for twenty thousand shares of the capital stock of the Nashville and Chattanooga Rail Road Company, upon certain conditions specified in said act, among which conditions was the following, viz: That if the Legislature of Tennessee, at its next session shall, on a *bona fide* application by the Board of Mayor and Aldermen of Nashville, fail or refuse to amend their charter, so as to permit them to issue bonds or scrip, or borrow money on the faith of the Corporation to meet the calls or instalments to become due on their subscription, then it shall be optional with the Board of Mayor and Aldermen of Nashville to continue their subscription for the whole or any number of shares of stock thus taken, or withdraw their subscription entirely, receiving in payment their ten thousand dollars, (to be paid at the time of subscription) or so much thereof as might not be consumed in the necessary expenses

accruing during the continuance of their subscription." And *whereas*, since the passage of this act, the said Legislature of the State of Tennessee, upon application of the Mayor and Aldermen of the Town of Nashville, have, by an amendment to the charter of said Corporation, in an act of the General Assembly, passed on the 9th day of December, 1847, conferred upon the said Corporation the power and authority aforesaid, with other power and authority—and *whereas*, said subscription for said stock, authorized by said act of said Corporation, has not as yet, in fact, been made—now therefore

SECTION 1. *Be it enacted by the Mayor and Aldermen of the Town of Nashville*, That the Mayor of the Town of Nashville, be, and he is hereby authorized and empowered for and on behalf of the Corporation of said town, and in their name, to subscribe for twenty thousand shares of the capital stock of the Nashville and Chattanooga Rail Road Company, subject to the conditions hereinafter mentioned.

SEC. 2. *Be it further enacted* That the sum of ten thousand dollars be, and the same is hereby appropriated out of any money in the Treasury not otherwise appropriated, to pay the sum of fifty cents on each share of stock thus subscribed, which sum is to be paid at the date of the subscription.

SEC. 3. That this subscription shall be made subject to the following [restrictions and conditions. 1st. The Rail Road Company shall be bound to receive and accept the bonds or scrip of the Corporation of Nashville if offered to them, as authorized by the act of the General Assembly aforesaid, at its par value, in payment of the calls on the subscription. 2nd. The construction of the road shall not be commenced until forty thousand shares of the stock of said company, in addition to that taken by this Corporation, shall also be subscribed.

SEC. 4. *Be it enacted*, That it shall be the duty of the Mayor aforesaid, in making the subscription aforesaid, to file with the Board of Commissioners of the Rail Road Company, a copy of this act, and that he receive from said Board, or their agent, a written acceptance of the subscription under its terms, which he shall file in the archives of the Corporation.

SEC. 5. *Be it enacted*, That so much of the said act of the

Mayor and Aldermen of the Town of Nashville above referred to, as comes within the perview and meaning of this act, be and the same is hereby repealed.

ALEX. ALLISON, *Mayor.*

W. GARRETT, *Recorder.*

[Passed 23d December, 1847.]

CORPORATION OF NASHVILLE.

I, William Garrett, Recorder for the Corporation of the City of Nashville, and having the charge of the Corporate Seal thereof, certify the foregoing is a true copy of an act of said Corporation, to authorize the subscription on behalf of the Town of Nashville, of twenty thousand shares of stock in the Nashville and Chattanooga Rail Road Company, faithfully copied from the original in my office.



IN WITNESS WHEREOF, I have hereunto set my hand, and caused said Corporate Seal to be hereunto affixed, at the City Hall in Nashville, the 8th day of December, 1848. W. GARRETT, *Recorder.*

Resolved by the Mayor and Aldermen of the City of Nashville,
That bonds of the Corporation be issued in conformity with the provisions of "an Act of this corporation, entitled an Act to authorize the subscription on behalf of the town of Nashville of twenty thousand shares of stock in the Nashville and Chattanooga Rail Road Company"—and with the act of the General Assembly of the State of Tennessee, authorizing such subscription to be made.

Resolved, That said bonds be prepared by the Mayor of said City, under the advice of counsel, and be signed by him, and countersigned by the Recorder of said City, and delivered from time to time as they may be required by said company, under their calls upon their stockholders.

Resolved, That bonds be prepared under the superintendence of the Mayor, of such description in regard to the execution thereof, with coupons for the payment of interest, as the Mayor may deem proper, with a view to their negotiation here or elsewhere.

Resolved, That a registry be kept of the number, date, and amount of each of said bonds, and of the time of their deliv-

ery to said Company, by the Recorder of the City, for which he shall be paid, as may be hereafter provided.

Resolved, That said bonds shall be in sums not less than one thousand dollars, and payable one hundred thousand in twenty, one hundred thousand in twenty-four, one hundred thousand in twenty-six, and one hundred thousand in twenty-eight, and the residue in thirty years, from their respective dates.

CORPORATION OF NASHVILLE.

I, William Garrett, Recorder for the Corporation of the City of Nashville, certify the above is a true copy of Resolutions passed by the Board of Mayor and Aldermen of said City, at a meeting at the City Hall on the 25th day of January, 1849. Given under my hand at said City Hall, the 26th day of January, 1849.

W. GARRETT, *Recorder.*

NASHVILLE, *January 25th, 1849.*

At a meeting of the Board of Directors of the Nashville and Chattanooga Rail Road Company, the following resolution was adopted:

Resolved, That the bonds of the Corporation of Nashville, to be issued to this company in payment of the stock of said corporation, be endorsed by the President of this Company for the purpose of negotiation, and that the President have authority to negotiate said bonds.

RAIL ROAD OFFICE, Feb. 1, 1849.

I certify the foregoing Resolution is a true copy from the minutes of the Rail Road Company.

JOS. F. GIBSON, *Sec'y.*

The Opinion of the Supreme Court of Tennessee, confirming the subscription of the City of Nashville, to \$500,000 of the Stock of the Nashville and Chattanooga Rail Road Company.

John Nichol and others

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The Corporation of Nashville.

Opinion by Judge Turley.

This bill is filed on behalf of the complainants, to restrain the Corporation of Nashville, from issuing bonds for the purpose of raising money to provide for the payment of twenty

thousand shares of stock, subscribed by the corporation in the Nashville and Chattanooga Rail Road.

The facts necessary for the proper understanding of this case are as follows: On the 11th day of December, 1845, the Legislature of the State of Tennessee, passed an act to incorporate a Rail Road, leading from Nashville on the Cumberland River, to Chattanooga on the Tennessee River, and by the 17th section authorized "any State, or any citizen, corporation or company to subscribe for and hold stock in said company with all the rights and subject to all the liabilities of any other stockholder."

Under the provisions of this act, the Mayor and Aldermen of the Corporation of Nashville adopted a resolution, authorizing the Mayor to subscribe for twenty thousand shares of the capital stock of the Nashville and Chattanooga Rail Road; which subscription, however, had not been made before the meeting of the Legislature of the State, at Nashville on the first Monday in October, 1847. During the session of this Legislature, a bill was introduced, and which became a law on the 9th day of December, 1847, by which, after stating by way of preamble, the fact that such subscription had been so ordered, but not made, and that it was considered necessary that further power should be extended to the corporate authorities of said Town, to enable them to pay the calls upon said stock, provision is made "that the Town of Nashville be, and it is hereby authorized, through its Mayor and Aldermen, and by the subscription of the Mayor on the books of the Nashville and Chattanooga Rail Road Company, to subscribe for twenty thousand shares of the capital stock of said company;—and that they be further authorized to raise money on loan, by pledging the faith of the Corporation, by pledging a portion of its taxes by mortgage or otherwise, as to them may seem best, to an amount not exceeding what may be demanded for the calls upon the stock aforesaid, and said loan may be created for such length of time and payable in such manner as the said Mayor and Aldermen may deem best. And that they be further authorized, if to them it shall seem best, instead of making loans as aforesaid, for the whole amount of said calls or any part thereof, to issue the bonds of the corporation, under its corporate seal, to be signed by the Mayor, and coun-

tersigned by its Recorder, for the whole or any part of said calls, which may be made from time to time by said Rail Road Company, on said stock; *Provided*, That the bonds so to be issued shall be in sums, not less than five hundred dollars each, and that they shall not be on any greater rate of interest than six per cent. per annum, and shall not be payable at a greater distance of time, from their respective dates than thirty years."

It is contended on the part of the complainants, a portion of the Corporators of Nashville, that these acts of the Legislature of the State, of 1845 and '47, conferred no power upon the Corporation of Nashville, to subscribe for this stock, no power to borrow money upon an hypothecation of its taxes, or of issuing bonds for that purpose, in order to pay the calls upon such stock, as the same should be made from time to time by the Rail Road Company, because said acts, so far as they purport to create such powers in the Corporation, are unconstitutional and void. That the scheme of this road is visionary, and that if the Corporation of Nashville be permitted to involve the Town in a subscription thereto of five hundred thousand dollars, irreparable mischief will be done to its inhabitants, the property holders, who will become responsible for the payment of this amount with all accruing interest thereon.

This case is important, from the magnitude of the interest involved, and the number of persons to be affected by it, and it therefore has merited, and has received at our hands, the most deliberate and patient investigation that we are capable of, and in the conclusions to which we have arrived, we feel confident that we have not been biassed by any personal interest or feeling in relation to it, because we are conscious that none such exist.

As to the feasibility of this scheme of a Rail Road from Nashville to Chattanooga, and its usefulness, if feasible, it is not to be expected but that there shall be a contradiction of opinion; it always has, it always will be so, in relation to improvements of this and a like character. For while the sanguine and hopeful anticipator is ever ready to look forward with exaggerated expectation, of great and beneficial results from such schemes; the saturnine and cautious are equally ready to view them, with exaggerated fears of in-

volvement and loss. It is best that it should be so, for generally the fire of the one, and the caution of the other, will be mutually operative, producing an action more to be relied on, than would be that, which is the result of either of them singly. But in relation to this difference of opinion, this court can take no action, it can form no ingredient to be taken into consideration by us in discussing this case. It is and can only be operative in the counsels of the Corporation—there it no doubt has been heard and attended to, and the result has been the determination, on the part of the Corporation to subscribe for the stock—whether this act is to result to its injury or benefit, time alone can tell, it is not a matter for our speculative enquiries.

In the argumentation of this case, the court might take an excursive range in the review and origin of corporations, the power of governments to create them, the powers that may be extended to them, the manner in which they are to be construed and executed, but we do not deem it necessary so to do; for in our opinion the principles regulating and controlling the questions debated in this case, are few, simple in their construction and of very ready access. In the State of Tennessee, a corporation is the creation of the legislative department of the government, it exists solely and alone by virtue of its act of incorporation, and it can exercise no powers but such as are expressly granted to it and such as are the result of necessary and proper implication. This principle necessarily follows from the relation a corporation occupies towards the State—it is not as has been justly remarked in the argument of the case, a *regnum in regno*, but it is a thing created by legislative enactment, to which certain powers of action are given for trade, for manufacturing, for municipal government, for education, or for any other legitimate purpose, for which a combination of capital or of intellect or of numbers may be desired. Its whole action must necessarily be the result of the authority conferred upon it, which may be limited or extended as the Legislature, in its wisdom may think proper to strengthen or weaken it, by delegating or withholding those powers which are inherent in the State or are only to be exercised by its individual citizens, without a charter of incorporation. The powers of corporations being exercised then un-

der delegated authority, are to be strictly construed. So are all delegated powers, whether they be of a private or public character, and if any one thinks that this principle is of modern discovery, he is greatly mistaken. It was as well known to my Lord Coke and his successors in the common law, as it has ever been to any expounder of the constitution of the United States, and the principle is as well, if not better established, by the decisions of the Courts of England, as it has been by the political debates at the hustings and in Congress, or by the Supreme Court of the United States.

But this strict construction has never confined the execution of the power to its word and letter, but every thing necessary and proper for carrying into execution the granted power, has always been conceded by the strictest constructionist. I do not design to enter into an investigation of what are to be considered necessary and proper means, both because, it would be interminable, and because it is not necessary for the case under consideration. In fact, such discussion cannot be profitable in a court of justice, except in relation to a particular act done, and which is claimed to be a necessary and proper act for carrying into execution a given power.

This much, we have deemed it proper to say, in relation to the construction of powers; not because the acts designed by the Corporation of Nashville, and which are by this bill sought to be enjoined, viz: the subscription of stock to the Nashville and Chattanooga Rail Road, or the borrowing of money upon the faith of its taxes or bonds, is the exercise of an implied power, (on the contrary, the power to do so is expressly given) but because the question has been much argued, and we are not willing that it should be supposed, that we have overlooked it.

A Corporation being the creature of the Legislature, it necessarily follows, that unless its creation involves a contract and vested rights on the part of the Corporation, it is at all times subject to legislative control, and may have its privileges and immunities enlarged or diminished from time to time, as the public good may require, and at the discretion of the Legislature, and this is particularly the case with municipal corporations, created for the ordering and governing of towns and cities. The delegation of higher and greater powers may be

required at one time than another, and they may, therefore, very properly, be expanded or contracted at pleasure, according to the necessity of the case.

This power of the legislative department of the State to create Corporations, does not rest alone upon an implication arising out of sovereignty in legislation, though that is sufficient to support it, as was held by this court in the case of ——, 8 Humph. R., but is supported by express grant in our constitution.

The 7th section of the 11th article, provides that "the Legislature shall have power to grant such charters of incorporation as they may deem expedient for the public good."

From this view of the case then, we learn that the Legislature of the State had the power to create the Corporation of the Town of Nashville, with such powers for the good government of the town, and for the promotion of the health, comfort and prosperity of its citizens, as the Legislature might deem it expedient to entrust to its Board of Mayor and Aldermen, and that it might from time to time, enlarge those powers at discretion.

The Town of Nashville was incorporated by an act of the Legislature, passed the 11th day of September, 1806, with such powers delegated to the Corporation as were then deemed meet and proper for its condition, what these were, it is not necessary to enquire, as it is not contended that the power to take stock in this Rail Road, and raise money for the payment thereof by bond or hypothecation of taxes, arises out of them. But we have seen that the powers of this Corporation have been extended so as to embrace this purpose, by the acts of 1845 and '47.

The act of 1845 merely authorized the Corporation to take stock in the Rail Road, without giving power to raise the money for its payment. We think that there is nothing unconstitutional in this provision of the statute. If the Corporation had money, as it might well have, there can be no good reason why it should not be permitted to vest it in such stocks as might be supposed would be profitable—individuals so vest their money, and why should not a Corporation be permitted to do so. It has been the constant practice to permit private corporations to vest its money in stocks, why may not a pub-

lic corporation be likewise authorized to do so. There is no reason against it. It is no argument against it, to say that such investment is not a corporate purpose—why is it not a corporate purpose? If a Corporation have a surplus fund, is it not a corporate purpose to have it vested to the best advantage? Is it not for the benefit of the Corporation, and therefore a corporate purpose, that this fund should be securely vested, and at the best profit. If it be, why may it not be vested in Rail Road stock, if the corporate authorities think it best. And why may not the Legislature enlarge its powers to enable so to do this, if by strict construction it be held not to have such power without. In our judgment it may, and under this statute we would be constrained to hold, that the corporate authorities of the Town of Nashville had the power to subscribe the stock in the Rail Road, and to execute its notes for the payment thereof; as the power to contract, necessarily implies the power to execute the commercial evidences thereof. *Union Bank against Jacobs, 7th Humph.* And upon a bill to enjoin the Corporation from subscribing for such stock and executing its notes for the payment, we could not and would not enquire whether the Corporation had the money to take up these notes, or whether when they fell due, the amount would have to be raised by taxation or borrowing.

But the act of 1847 goes a step further than the act of 1845, and in addition to the power then given to subscribe for the stock, authorizes the Corporation to borrow money for that purpose, upon the faith of the Corporation, by hypothecating its taxes, or if to them it shall seem best to issue bonds of the Corporation, for the whole, or any part thereof.

Now it is contended that this statute authorizes an appropriation, by taxes, for this subscription of stock, and that this Rail Road is not a corporation purpose, and that therefore, the Legislature cannot under the provisions of the 29th sec. of the 11th article of our Constitution, authorize the Corporation of Nashville to levy and collect taxes for the payment of liabilities created by this subscription.

This presents a question not entirely free from difficulty and is, indeed, the only one worthy of serious consideration in the case.

The 29th section of the 11th article of our constitution pro-

vides, that "the General Assembly shall have power to authorize the several counties and incorporated towns in the State, to impose taxes for county and corporation purposes, respectively, in such manner as shall be prescribed by law, and all property shall be taxed according to its value, upon the principles established in regard to State taxation."

The reason why this clause was embraced in our constitution, those contemporaneous with its formation, know to have been, that doubts had been suggested by the highest judicial tribunal of the State, as to whether the taxing power could be delegated by the Legislature to the counties, and to the incorporated towns, and the clause was intended to remove these doubts. It does nothing more, however, in enlarging the powers of the Legislature, than, it is believed, it possessed before upon this subject, and nothing more in restricting the exercise of the power on the part of the counties and corporate towns, to taxation for county and corporate purposes, than existed before. But be this as it may, we think that the Legislature, most clearly, has no power to delegate to a county or corporate town the power of levying taxes for any other than county or corporation purposes: And that if this act of 1847 is to be considered as an act conferring on the Corporation of Nashville the power to tax its corporators for the purpose of paying for this subscription to the stock of the Nashville and Chattanooga Rail Road; and that the erection of said road is not a corporate purpose of the town of Nashville, then the act is unconstitutional and void.

In discussing this statute, these two questions are presented:

1st. Does the act authorize the Corporation to levy a tax for the purpose of paying the subscription of the stock?

2nd. Is the erection of the road a corporate purpose of the town of Nashville?

We have seen that the statute contemplates the raising the money for this purpose, in one of two ways. 1st. By borrowing the money upon the faith of the Corporation, and by hypothecating the corporation taxes. 2nd. By issuing bonds for the whole or any part of said stock, as calls may be made, from time to time, by the Rail Road Company.

If the first mode of raising the money be resorted to, it would be the fair construction that it was to be raised by taxa-

tion; for it would be borrowed upon the faith of the Corporation, and the corporation taxes would be pledged for its payment. If the second should be resorted to, it would not be certain that the means were to be raised by taxation, for bonds are directed to be executed, these bonds may or may not have to be met by taxation; if they are paid without taxation, the question as to the constitutionality of the law would not arise. This will show how difficult it is for us to determine the question of constitutionality of the act upon this branch of the subject. In order to hold it unconstitutional, we must assume, not only that an illegal power to tax is created by it, but also that the Corporation is about to exercise it by creating a debt which must necessarily be paid by taxation. Now, however probable we might deem this to be, it would be found very difficult to make it a legal presumption, so as to give relief by injunction, instead of compelling the dissatisfied Corporators to wait until there should be an attempt to levy the illegal tax.

But on account of the importance of the interest in controversy, and the desire to have this case adjudged upon its essential merits, we have thought proper not to dismiss the bill upon this proposition alone, without discussing the second question in relation to the statute.

2nd. Is the making of the road from Nashville to Chattanooga, a corporation purpose of the town of Nashville. What is a corporation purpose of the town of Nashville? General definitions are always difficult to give with precision and accuracy, especially where they have to cover as extensive ground as that embraced by the expression, corporation purposes. I shall not, therefore, attempt to specify what are corporation purposes of the city of Nashville—they are or may be made to be as numerous and diversified, as may be found requisite by experience, to promote the peace, health, comfort and prosperity of its corporators, and any thing which promotes these things, is or may be constituted a legitimate corporate purpose. Perhaps I might divide corporate purposes into two classes, those which are direct, and those which are indirect. A direct corporate purpose might be styled to be one, which in its direct and immediate consequences, operates upon the interests of the Corporation: Such would be all police regulations for the government of the town, the promotion of good

order, the protection of its citizens from the lawless, the suppression of vice, the opening and preservation of highways, streets and alleys, the erection of market houses and hospitals, supplying the town with water, &c. An indirect corporate purpose, might be styled to be one which does not, in its direct and immediate consequences operate upon the corporators, but the beneficial effects of which are to be experienced in a remoter degree, and which have to be traced to their source before they can be duly comprehended and appreciated. Such are all facilities of canals, roads, bridges, the improvements of rivers, by which their navigable use is extended, by all which the commercial interest of a town is increased and expanded, by reason of the increased facilities of communication, thus furnished, by means of which the wealth of its population, individually and collectively is increased, with a consequent increase of the comforts and enjoyments of life. It is true that these improvements must have some connection with the corporate Town, claiming them as corporate purposes, more direct than that which would result from the general increased prosperity of the country by reason of such improvements, made without a direct reference to, or in direct connection with the Town. That is, the improvement claimed to be a corporate purpose, of the character under discussion, must have such relation to the Town, as to be known to be the medium, through which this prosperity is attained. It must begin or terminate at the town, or pass through or so near it as to be capable of effecting its direct interest. It would seem to be an incontrovertible truth, that a corporate town is deeply interested in the making of any road, or other means of transportation and travel, whereby the facilities of its commerce are increased; and if it be so interested, why shall it not become a corporation purpose, to have them made? It would really seem almost useless to argue in favor of it. Is there any thing illegal in it? Is there anything against good morals in it? Is there anything against public good in it? Surely not. A town is situated ten miles from a navigable stream, it is obvious that it must be a matter of great importance to the town, its commerce, and general prosperity, to have a Rail Road or McAdamized Road to this river. It concerns no one else but this town, and no one else will make it. Shall

it not become a corporation purpose of this town, to make it, if it be able? Surely no one will deny but that it may. Distance cannot change the principle; if it can become a corporation purpose to make the road ten miles, so it may, if like reason exist, and there be like ability to make the Road, twenty, thirty, or any other number of miles; there being no limit, save the extent of the ability of the corporation, and the discretion of the Legislature in granting it the power.

If a corporation may make the Road, may it not join with others in making it. If the undertaking be too expensive to be carried into execution by the Corporation itself, or if others be desirous of uniting with it for the effectuating of the design, why may they not unite? Again, it may be asked, is there any thing wrong in this? Is there any thing against the public good in this? Is there any thing against law in this? Surely not. And if the majority of the corporators are desirous of doing this, and the Legislature will grant them the privilege of doing it—upon what principle shall the minority interfere and prevent it. Minorities are protected against the illegal acts of majorities, but they must submit to those which are legal.

We again say, that of the wisdom of this scheme, of uniting Nashville and Chattanooga, by Rail Road, we have nothing to say—we are not judges of it—the consequences of the event are in the womb of time, they may be highly beneficial to the town, or they may not, this cannot effect the judicial determination of this case.

If the making of this road can be considered a corporation purpose, there is no pretence for holding the act of 1847, which authorizes the Corporation of Nashville to pay for its subscription to the road, by a loan, effected upon its credit, and a mortgage of its taxes, or by the issuance of the bonds for the same purpose, to be unconstitutional. And we are not able to comprehend, why the making of this road should not be a corporate purpose of the town of Nashville, as well as the making a road running from the square to the water works above the town. The only distinction is, that the one is longer than the other, and will cost more money; but this, as to principle, is a distinction, and not a difference.

In this view of the case, we are sustained by the decision of the Supreme Court of Virginia, in the case of *Goddin vs.*

Crump, 8th Ligh's Rep. 120, and by the decision of the Supreme Court of Connecticut, in the case of City of Bridgeport against the Housatonic Rail Road Company, 15th Conn. Rep. 475, in both of which cases, the questions presented for the consideration of the court, were the same in principle as those discussed in this case, and received the same determination.

We then hold, that the Legislature of Tennessee had the constitutional power to authorize the Corporation of Nashville to take stock in the Nashville and Chattanooga Rail Road. That the making of this road is a legitimate corporate purpose of the Corporation, and that it is legally authorized to pay for its subscription to the stock of said road, in either of the modes pointed out by the act of 1847, and therefore, affirm the decree of the Chancellor, and dismiss the bill with cost.



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